

On September 3, 2019 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On September 18, 2019 OWCP referred appellant to Dr. Chason S. Hayes, a Board-certified orthopedic surgeon, for a permanent impairment rating. In a report dated October 11, 2019, Dr. Hayes diagnosed lumbar radiculopathy. He found appellant was at maximum medical improvement (MMI). Using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), he found that appellant had an eight percent permanent impairment of the lumbar spine. In an addendum dated November 5, 2019, Dr. Hayes noted that he had been requested to recalculate appellant's permanent impairment based upon her peripheral nerve impairment. He concluded that under this method, as appellant had no motor or sensory deficits she had zero percent permanent impairment.

In a report dated December 10, 2019, Dr. Arthur Harris, a Board-certified orthopedic surgeon serving as the district medical adviser (DMA), noted his disagreement with Dr. Hayes' October 11, 2019 impairment rating for lumbar spine impairment as this permanent impairment rating was not based on *The Guides Newsletter Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The Guides Newsletter*) for rating spinal nerve impairments. He explained that appellant did not have any neurologic deficit causing sensory or motor loss, therefore she had a Class 0 placement using Table 2 of *The Guides Newsletter* resulting in zero percent lower extremity permanent impairment, due to her lumbar radiculopathy.

By decision dated December 30, 2019, OWCP denied appellant's claim for a schedule award as the medical evidence of record was insufficient to support an impairment to a member or function of the body.

In a report dated November 20, 2020, Dr. Dumonski diagnosed left sacroiliac joint dysfunction. He explained that appellant's 30 percent permanent impairment rating was based upon her sacroiliac joint dysfunction, which caused pain to extend into her left leg.

On January 5, 2021 OWCP received appellant's request for reconsideration of the December 30, 2019 decision.

By decision dated January 13, 2021, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

The Board, having duly considered the matter, finds that this case is not in posture for decision.

The Board finds that OWCP did not make findings regarding the evidence appellant submitted in support of the reconsideration request.¹ OWCP summarily denied appellant's request for reconsideration without complying with the review requirement of FECA and its implementing regulations.² As noted, section 8124(a) of FECA provides that OWCP shall determine and make

¹ See *R.C.*, *Order Remanding Case*, Docket No. 20-1671 (issued May 6, 2021); *J.K.*, *Order Remanding Case*, Docket No. 20-0556 (issued August 13, 2020); *C.D.*, *Order Remanding Case*, Docket No. 20-0450 (issued August 13, 2020); *T.B.*, *Order Remanding Case*, Docket No. 20-0426 (issued July 27, 2020).

² See *M.G.*, Docket No. 21-0893 (issued December 27, 2021); *Order Remanding Case, W.D.*, Docket No. 20-0859 (issued November 20, 2020); *Order Remanding Case, C.G.*, Docket No. 20-0051 (issued June 29, 2020); *Order Remanding Case, T.P.*, Docket No. 19-1533 (issued April 30, 2020); see also 20 C.F.R. § 10.607(b).

a finding of fact and make an award for or against payment of compensation.³ Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings and facts and a statement of reasons.⁴ As well, OWCP's procedures provide that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.⁵

In the January 13, 2021 decision, OWCP did not reference or consider the November 20, 2020 medical report of Dr. Dumonski that appellant submitted in support of her request for reconsideration. It failed to analyze this evidence. OWCP summarily denied appellant's request for reconsideration without complying with the review requirements of FECA and its implementing regulations.⁶ Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.⁷ Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons.⁸ As well, OWCP's procedures provide that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.⁹

The Board will therefore set aside OWCP's January 13, 2021 decision and remand the case for an appropriate decision on appellant's reconsideration request, which considers the evidence submitted. Accordingly,

³ 5 U.S.C. § 8124(a).

⁴ 20 C.F.R. § 10.126.

⁵ Federal (FECA) Procedure Manual Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013) (all decisions should contain findings of fact sufficient to identify the benefit being denied and the reason for the disallowance).

⁶ See *C.G.*, *supra* note 2; *T.P.*, *supra* note 2; see also 20 C.F.R. § 10.607(b).

⁷ 5 U.S.C. § 8124(a).

⁸ 20 C.F.R. § 10.126.

⁹ *Supra* note 5.

IT IS HEREBY ORDERED THAT the January 13, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: March 23, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board